



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

Region IX  
75 Hawthorne St  
San Francisco, CA 94105

ENFORCEMENT AND COMPLIANCE  
ASSURANCE DIVISION

SEPTEMBER 22, 2020

VIA ELECTRONIC MAIL to [rwalton@taxtriallawyers.com](mailto:rwalton@taxtriallawyers.com)

**IN THE MATTER OF: Voided Warranty Tuning, Inc.**

**Follow-up Request for Information: § 208(a) of the Clean Air Act, 42 U.S.C. § 7542(a)**

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Mr. Walton:

On January 13, 2020, the United States Environmental Protection Agency, Region IX (EPA) issued a Request for Information (Request) to Voided Warranty Tuning, Inc. (VWT), et al., pursuant to Section 208(a) of the Clean Air Act (CAA), 42 U.S.C. § 7542(a). Appendix C to the Request requested invoices for the following: (1) work performed involving the removal of emission related parts or the installation of any product; (2) all engine management (EM) products sold by Voided Warranty; and (3) all exhaust products. A preliminary response was submitted to EPA via e-mail on June 18, 2020 but dated February 18, 2020. A supplemental response was provided on August 13, 2020. The Request required the submittal of the information to be accompanied by a certification (provided in the Request-Appendix E) signed by an authorized representative. A certification was not included in neither of the two submittals to EPA (*See attached Appendix E*).

Based on the responses previously provided, we are now requesting more comprehensive information to assess compliance with the Section 203 of the CAA, 42 U.S.C. § 7522, and the applicable regulations at 40 C.F.R. Parts 85, 86, and 1068. As stated in the original Request, we are seeking this information on a phased basis. Request Nos. 1-5 of the Request require VWT Tuning to input information into a template Excel spreadsheet that accompanies this Request for Information (*See Appendix F*). Again, EPA issues this Request for Information under Section

208(a) of the CAA, 42 U.S.C. § 7542(a). Under Section 208(a), the Administrator of the EPA may require any person who is subject to the CAA to provide information necessary to determine whether the person has acted in compliance with these requirements and the regulations promulgated thereunder. The Administrator has delegated this authority to the undersigned Manager of Region 9's Air Enforcement Office, Enforcement and Compliance Assurance Division.

Failure to provide all requested information in its entirety, submit a certification, and in the format requested, may result in penalties and additional inquiries. Any failure may be deemed a violation of Section 203(a)(2) of the CAA, 42 U.S.C. § 7522(a)(2), and through the initiation of a civil action pursuant to Section 205(b) of the CAA, 42 U.S.C. § 7524(b), may result in the assessment of a penalty of \$48,192.00 per day of violation. Also, there are significant penalties for knowingly submitting false statements and information, including the possibility of fines or imprisonment pursuant to Section 113(c)(2) of the CAA, 42 U.S.C. § 7413(c)(2), and 18 U.S.C. §§ 1001 and 1341.

It is important that your responses be clear, accurate, organized, and complete. We will regard any information that is misleading, false, incomplete, or submitted without regard to its accuracy as a violation of the CAA and/or relevant criminal statutes.

Voided Warranty Tuning must submit a complete and accurate response to Request Nos. 1-5 in a readable Excel spreadsheet within thirty (30) days from the date of this letter. If you anticipate more time being needed, within two weeks of this letter, please reach out to Nathaniel Moore in the Office of Regional Counsel at (415) 972-3899 or [Moore.Nathaniel@epa.gov](mailto:Moore.Nathaniel@epa.gov), and provide an explanation why more time will be needed and for which questions. EPA Will review your request and may extend the time for a response. EPA acknowledges that the COVID-19 pandemic may be impacting your business. If that is the case, we will consider your specific circumstances in determining an appropriate timeline for responding to this request for information, while still ensuring that the Agency receives the information it needs to timely confirm your company's compliance with the CAA.

As required in the previous Request, you must submit all requested information under an authorized signature with the following certification (provided in Appendix E):

I certify under penalty of law that I have examined and am familiar with the information in the enclosed documents, including all attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are, to the best of my knowledge and belief, true and complete. I am aware that there are significant penalties for knowingly submitting false statements and information, including the possibility of fines or imprisonment pursuant to Section 113(c)(2) of the Clean Air Act, 42 U.S.C. § 7413(c)(2), and 18 U.S.C. §§ 1001 and 1341.

You may be entitled to assert a business confidentiality claim covering all or part of the information provided in response to this Information Request as specified in the Confidentiality of Business Information ("CBI") regulations, 40 C.F.R. Part 2, Subpart B. You must specify the

page, paragraph, and sentence when identifying the information subject to your CBI claim. Appendix D of this Information Request specifies the assertion and substantiation requirements for business confidentiality claims. EPA may, without further notice, provide the public with any information not subject to a CBI claim.

At this time, EPA Region 9 is not accepting any hard-copy document deliveries. If possible, we ask you to provide you respond in electronic form via email at [chan.janice@epa.gov](mailto:chan.janice@epa.gov) or a file transfer program (FTP). Upon request to [chan.janice@epa.gov](mailto:chan.janice@epa.gov), EPA will provide a secure link to an FTP site in order to submit responses to this Information Request.

Any questions concerning this letter should be directed to Janice Chan at (415) 972-3308 or [Chan.Janice@epa.gov](mailto:Chan.Janice@epa.gov) or you can contact Nathaniel Moore in the Office of Regional Counsel at (415) 972-3899 or [Moore.Nathaniel@epa.gov](mailto:Moore.Nathaniel@epa.gov).

Sincerely,

Roshni Brahmbhatt, Manager  
Air Enforcement Office, Enforcement and  
Compliance Assurance Division  
U.S. Environmental Protection Agency  
Region IX

cc: Janice Chan, EPA Region IX Office of Enforcement and Compliance Assurance  
Nathaniel Moore, EPA Region IX Office of Regional Counsel

## Appendix A

### Definitions

All terms used in this Information Request will have their ordinary meaning unless such terms are defined below or in the CAA, 42 U.S.C. §§ 7401 et seq., or the Motor Vehicle Regulations found at 40 C.F.R. Parts 85, 86, and 1068, in which case they shall have their meanings as defined therein.

1. The term “information” includes any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, interoffice and intraoffice communications, electronic mail (“email”), instant messages, calendars, contracts, cables, notations of any type of conversation, telephone call, meeting, or other communication, bulletins, printed matter, computer printouts, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, presentations, spreadsheets, and worksheets. The term “information” includes all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments to the foregoing, as well as any attachments or appendices thereto. The term “information” also includes any graphic or oral records or representations of any kind (including, without limitation, photographs, charts, graphs, voicemails, microfiche, microfilm, videotapes, recordings, and motion pictures), electronic and mechanical records or representations of any kind (including, without limitation, tapes, cassettes, disks, computer server files, computer hard drive files, CDs, DVDs, back-up tape, memory sticks, recordings, and removable computer media such as thumb drives, flash drives, memory cards, and external hard drives), and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, electronic format, disk, videotape or otherwise. Information bearing any notation not part of the original text is considered to be separate information. A draft or non-identical copy is separate information within the meaning of this term.
2. The term “entity” means any natural person, corporation, partnership, limited liability company, sole proprietorship, joint venture, or any formal or informal group, organization or association.
3. The term “person” includes an individual, corporation, partnership, or association. *See* Section 302(e) of the CAA, 42 U.S.C. § 7602(e).
4. The term “you,” “your,” and “Voided Warranty” means Voided Warranty Tuning, Benchharness Inc., and any affiliates, predecessors, successors, and assignees.
5. The term “engine tune,” “tune,” or “calibration” means any combination of software

programming, calculations, computer logic, tables of information (e.g., fuel timing maps), coding, or other content or information, stored in any form, capable of affecting or controlling an ECM.

6. The term “product” includes any software code, software, hardware, program, element of design, calibration, engine tune, EM product, device, part, or component.

**Appendix B**  
**Instructions for Responses**

1. Provide a complete, detailed response, in English, to each Request in Appendix C below.
2. Please provide your response to this Information Request in electronic form via email or a file transfer program. All responsive documents and materials (e.g., copies of print media, audio, and visual material) must be provided as an accurate and legible copy in searchable format, number stamped in sequential order (e.g., BATES stamped).
3. Where a Request allows or requires documents to be provided in response, provide all documents electronically in a folder specific to that question or subpart and labeled accordingly. Provide copies of documents, not original documents.
4. When a response is provided in the form of a number, specify the units of measure.
5. Where documents or information necessary for a response is not in your possession, custody, or control, indicate in your response why such documents or information are not available or in your possession, custody, or control, and identify any source that either possesses or is likely to possess such information.
6. Where you have previously submitted information to the EPA that is responsive to any of the Requests set forth in Appendix C, re-submit that information in accordance with these instructions (Appendix B). Identify the material that was previously provided, the date on which it was provided, how the information was provided (e.g., electronically, fax, mail), and the individual at the EPA to whom it was provided.
7. If you assert any objections in responding to this Information Request, each objection must state with specificity the grounds for objecting to the request, including the reasons, and must state whether any responsive materials are being withheld on the basis of that objection.
8. This Request for Information is a continuing request. You must promptly supplement your response to any Request in Appendix C in the event you learn that you possess responsive information not yet produced or if you gain possession, custody, or control of responsive information after responding to this Information Request.
9. You must maintain an unaltered and complete copy of your website as it exists at the time this Information Request is received for a period of two years. This includes all pages, graphical elements, and text displayed on the website. You must provide this information in readable electronic format to EPA within ten days upon request.

## **Appendix C**

### **Information Request**

Voided Warranty Tuning, Inc. (“Voided Warranty” or “you”) must submit the following information to the United States Environmental Protection Agency pursuant to Section 208 of the CAA, 42 U.S.C. § 7542, regarding the manufacture, sale, or offer for sale of certain parts and products.

1. For each product or service sold or installed identified in the invoices in Voided Warranty’s February 18, 2020 and August 13, 2020 response to EPA’s Information Request dated January 13, 2020, which Voided Warranty sold or installed during the period January 1, 2018, through January 13, 2020, provide all sales information, including the function the product or service provides and a description of such product or service, using the format provided in Appendix F, worksheet 1. Voided Warranty may provide the requested information in a spreadsheet exported from an invoice management program such as QuickBooks in lieu of using Appendix F, worksheet 1.
2. For each product in response to Request #1 that is an engine tune, tune, or calibration as defined in Appendix A, paragraph 6, identify all hardware and software tool(s) (e.g., EFI Live Autocal, EZ Lynk Auto Agent, SCT X4, etc.) you used to:
  - a. extract the original equipment manufacturer (OEM) tune files;
  - b. modify the OEM tune files and create tune files; and
  - c. install tune filesusing the format provided in Appendix F, worksheet 2.
3. For each product listed in response to Request #2, below, provide copies of your tune files exactly as those tune files were sold to customers between January 1, 2018 and January 13, 2020. Provide each tune file in .OLS format compatible with WinOLS and all other formats that exist, including but not limited to, .ORI, .tun, .ctz, .ctd, and all other formats compatible with EFILive Tuning Tool, WinOLS, and any of the software tools you identified in response to Request #2b. If multiple versions of a tune file (e.g., GDM13, GDM16, etc.) are responsive to this request, provide the tune file version with the most sales in the responsive time frame. All tune files shall be unencrypted and unlocked such that the tune files can be accessed and reviewed by EPA. Provide the tune file name in Appendix F, worksheet 2.
4. For each product listed in response to Request #2, provide copies of the corresponding OEM tune files. Provide each tune file in .OLS format compatible with WinOLS and all other formats that exist, including but not limited to, .ORI, .tun, .ctz, .ctd, and all other formats compatible with EFI Live Tuning Tool, WinOLS, and any of the software tools you identified in response to Request #2b. All tune files shall be unencrypted and unlocked such that the tune files can be accessed and reviewed by EPA. Provide the tune the corresponding OEM tune file name in Appendix F, worksheet 2.
5. Identify each person responsible for responding to this Information Request, including his or her title, and the Request(s) to which he or she responded.

## Appendix D

### **Confidential Business Information**

An entity may assert a business confidentiality claim covering all or part of the information provided in response to this Information Request for any business information entitled to confidential treatment under Section 208(c) of the CAA, 42 U.S.C. § 7542, and 40 C.F.R. Part 2, subpart B. Under Section 208(c) of the CAA, entities are entitled to confidential treatment of information that would divulge methods or processes entitled to protection as trade secrets. Under 40 C.F.R. Part 2, subpart B, business confidentiality means “the concept of trade secrecy and other related legal concepts which give (or may give) a business the right to preserve the confidentiality of business information and to limit its use or disclosure by others in order that the business may obtain or retain business advantages it derives from its rights in the information.” 40 C.F.R. § 2.201(e).

Information covered by a claim of business confidentiality will be disclosed by the EPA only to the extent, and by means of the procedures, set forth in Section 208(c) of the CAA and 40 C.F.R. Part 2, subpart B. If no such business confidentiality claim accompanies the response to this Information Request when it is received by EPA, then such information may be made available to the public without further notice. See 40 C.F.R. § 2.204(a)(3).

Pursuant to 40 C.F.R. § 2.301(h), EPA possesses the authority to disclose to any authorized representative of the United States information which might otherwise be entitled to confidential treatment. To assist in its review and analysis, the EPA may disclose information provided in response to this and other information requests to an EPA contractor, the Eastern Research Group, under contract number 68HERH19C0004. *See* 84 Fed. Reg. 8859, 59-60 (Mar. 12, 2019).

To assert a business confidentiality claim, an entity must place on (or attach to) all information it desires to assert as business confidential, either a cover sheet, stamped or typed legend, or other suitable form of notice employing language such as “trade secret,” “proprietary,” or “company confidential” at the time it provides its response to this Information Request. Allegedly confidential portions of otherwise non-confidential documents should be clearly identified, and may be provided separately to facilitate identification and handling by the EPA. An entity should indicate whether confidential treatment is only required until a certain date or until the occurrence of a certain event.

The criteria the EPA will use in determining whether material claimed as business confidential is entitled to confidential treatment are set forth at 40 C.F.R. §§ 2.208(a)-(d) and 2.301. Emission data, as defined at 40 C.F.R. § 2.301(a)(2), is expressly not entitled to confidential treatment under 40 C.F.R. Part 2, subpart B. *See* 42 U.S.C. § 7542(c); 40 C.F.R. § 2.301(e).

By submitting this information, you are consenting to a limited release of any confidential business information to EPA interns pursuant to 40 C.F.R. § 2.209(f). The EPA’s interns are required to sign confidentiality agreements as a requirement of their participation in EPA related matters.



## Appendix E

### **Statement of Certification**

You are submitting the enclosed documents in response to the U.S. Environmental Protection Agency's ("EPA") Information Request, issued pursuant to Section 208(a) of the Clean Air Act, to determine compliance with the Clean Air Act and its affiliated regulations.

I certify that I am fully authorized by \_\_\_\_\_ [corporate affiliation] to provide the above information on its behalf to EPA.

I certify under penalty of law that I have examined and am familiar with the information in the enclosed documents, including all attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are, to the best of my knowledge and belief, true and complete. I am aware that there are significant penalties for knowingly submitting false statements and information, including the possibility of fines or imprisonment pursuant to Section 113(c)(2) of the Clean Air Act, 42 U.S.C. § 7413(c)(2), and 18 U.S.C. §§ 1001 and 1341.

Date: \_\_\_\_\_

Name (Printed): \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_